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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN M. FLYNN, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

SIENTRA, INC., HANI ZEINI, and
MATTHEW PIGEON,
Defendants.

No.

CLASS ACTION

**COMPLAINT FOR
VIOLATION OF THE
FEDERAL SECURITIES
LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff John M. Flynn (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by his undersigned attorneys, for his complaint against
3 defendants, alleges the following based upon personal knowledge as to himself
4 and his own acts, and information and belief as to all other matters, based upon,
5 *inter alia*, the investigation conducted by and through his attorneys, which
6 included, among other things, a review of the defendants’ public documents,
7 conference calls and announcements made by defendants, United States Securities
8 and Exchange Commission (“SEC”) filings, wire and press releases published by
9 and regarding Sientra, Inc. (“Sientra” or the “Company”), analysts’ reports and
10 advisories about the Company, and information readily obtainable on the Internet.
11 Plaintiff believes that substantial evidentiary support will exist for the allegations
12 set forth herein after a reasonable opportunity for discovery.

13 **NATURE OF THE ACTION**

14 1. This is a federal securities class action brought on behalf of a class
15 consisting of all persons and entities, other than defendants and their affiliates,
16 who purchased the securities of Sientra from March 18, 2015 to September 24,
17 2015, inclusive (the “Class Period”). Plaintiff seeks to pursue remedies against
18 Sientra and certain of its officers and directors for violations of the federal
19 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

20 2. Defendant Sientra, a medical aesthetics company, develops and sells
21 medical aesthetics products to plastic surgeons. Sientra offers silicone gel breast
22 implants for use in breast augmentation and breast reconstruction procedures, as
23 well as breast tissue expanders. Sientra also provides body contouring and other

1 implants, including gluteal, pectoral, calf, facial, and nasal implants.

2 3. The exclusive manufacturer of Sientra's products is Silimed.
3 Headquartered in Brazil, Silimed is the largest manufacturer of silicone implants
4 in South America.

5 4. The Company was founded in 2003 and was formerly known as
6 Juliet Medical, Inc. Sientra is headquartered in Santa Monica, California, and its
7 shares trade on the NASDAQ under the ticker symbol "SIEN."

8 5. Throughout the Class Period, defendants made false and/or
9 misleading statements, and failed to disclose material adverse facts about the
10 Company's business, operations, prospects and performance. Specifically, during
11 the Class Period, defendants made false and/or misleading statements and/or
12 failed to disclose that: (i) Sientra's exclusive reliance on Silimed's Brazilian
13 manufacturing facilities carried significant quality control risks; (ii) the
14 manufacturing processes at the Silimed Rio de Janeiro manufacturing plant were
15 contaminated; and (iii) as a result of the above, the Company's statements
16 regarding quality control and other financial statements were materially false and
17 misleading at all relevant times.

18 6. On September 24, 2015, it was announced that the United Kingdom's
19 Medicines and Healthcare Products Regulatory Agency ("MHRA") had
20 suspended sales of Silimed products after an audit of Silimed's manufacturing
21 processes revealed contamination in Silimed's Rio de Janeiro manufacturing
22 plant.

1 7. On this news, shares of Sientra fell \$10.88, or nearly 52.9%, to close
2 at \$9.70 on September 24, 2015.

3 8. As a result of defendants' wrongful acts and omissions, and the
4 precipitous decline in the market value of the Company's securities, Plaintiff and
5 other Class members have suffered significant losses and damages.

6 **JURISDICTION AND VENUE**

7 9. The claims asserted herein arise under and pursuant to §§10(b) and
8 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5
9 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

10 10. This Court has jurisdiction over the subject matter of this action
11 under 28 U.S.C. §1331 and §27 of the Exchange Act.

12 11. Venue is proper in this District pursuant to §27 of the Exchange Act
13 (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as a significant portion of the
14 defendants' actions, and the subsequent damages, took place within this District.

15 12. In connection with the acts, conduct and other wrongs alleged in this
16 Complaint, defendants, directly or indirectly, used the means and instrumentalities
17 of interstate commerce, including but not limited to, the United States mail,
18 interstate telephone communications and the facilities of the national securities
19 exchange.

20 **PARTIES**

21 13. Plaintiff, as set forth in the accompanying Certification, which is
22 incorporated by reference herein, purchased the securities of Sientra at artificially
23

1 inflated prices during the Class Period and was damaged upon the revelation of
2 the alleged corrective disclosure.

3 14. Defendant Sientra is a Delaware company headquartered and
4 operating at 420 South Fairview Avenue, Suite 200, Santa Barbara, CA 93117.
5 Sientra's shares trade on the NASDAQ under the ticker symbol "SIEN."

6 15. Defendant Hani Zeini ("Zeini") has served at all relevant times as the
7 Company's President, Director, and Chief Executive Officer ("CEO").

8 16. Defendant Matthew Pigeon ("Pigeon") has served at all relevant
9 times as the Company's Treasurer and Chief Financial Officer ("CFO").

10 17. The Defendants referenced in ¶¶ 15 - 16 are sometimes referred to
11 herein, collectively, as the "Individual Defendants."

12 **SUBSTANTIVE ALLEGATIONS**

13 **Background**

14 18. Defendant Sientra, a medical aesthetics company, develops and sells
15 medical aesthetics products to plastic surgeons. Sientra offers silicone gel breast
16 implants for use in breast augmentation and breast reconstruction procedures, as
17 well as breast tissue expanders. Sientra also provides body contouring and other
18 implants, including gluteal, pectoral, calf, facial, and nasal implants.

19 19. The exclusive manufacturer of Sientra's products is Silimed.
20 Headquartered in Brazil, Silimed is the largest manufacturer of silicone implants
21 in South America.

22 20. The Company was founded in 2003 and was formerly known as
23 Juliet Medical, Inc. Sientra is headquartered in Santa Monica, California, and its

1 shares trade on the NASDAQ under the ticker symbol "SIEN."

2
3
4 **Materially False and Misleading
Statements Issued During the Period**

5 21. The Class Period begins on March 18, 2015, when Sientra filed an
6 annual report on Form 10-K with the SEC announcing the Company's financial
7 and operating results for the quarter and year ending December 31, 2014 (the
8 "2014 10-K"). For the quarter, the Company reported a net loss of \$3.20 million,
9 or \$0.34 per diluted share, on revenue of \$12.12 million. For 2014, the Company
10 reported a net loss of \$5.81 million, or \$2.28 per diluted share, on revenue of
11 \$44.73 million, compared to a net loss of \$19.13 million, or \$82.25 per diluted
12 share, on revenue of \$35.17 million for 2013.

13 22. The 2014 10-K stated, in part:

14 All of our products are listed under our FDA Medical Device
15 Establishment Registration where it indicates we are the specification
16 developer of our products and we are the owner of our products' FDA
17 approvals and clearances. ***This means that we are primarily
responsible for the manufacturing and quality assurance of our
products.*** However, we do not manufacture our products ourselves.
18 Instead, we rely on Silimed, as our contract manufacturer, to
19 manufacture and package our silicone gel breast implants, tissue
20 expanders and other products to our specifications. Silimed has over
21 34 years of experience manufacturing silicone-based implants and
22 distributes its products to over 60 countries worldwide. ***When we
receive products from Silimed, we inspect the products prior to
shipping them to our customers.*** We maintain strategic levels of
inventory at our storage facilities located in Santa Barbara, California.

23 We and Silimed are subject to the FDA's Quality System Regulation,
or QSR, reporting requirements and cGMP audits by the FDA. Under

1 the QSR and cGMP requirements, manufacturers, including third
2 party manufacturers, must follow stringent design, testing, production,
3 control, supplier and contractor selection, complaint handling,
4 documentation and other quality assurance procedures during all
5 aspects of the manufacturing process. Both we and Silimed have been
6 inspected by the FDA regularly, and no FDA Form 483 observations,
7 which are issued when an FDA inspector believes that observed
8 conditions or practices indicate the possibility that an FDA-regulated
9 product may be in violation of FDA's requirements, have been made
10 in connection with these inspections. Silimed has had three FDA
11 inspections in seven years and is also audited periodically by our
12 quality department to ensure conformity with the specifications,
13 policies and procedures for our products.

14 *At present, all of our products, including our silicone gel breast
15 implants and breast tissue expanders, are manufactured by Silimed*
16 *pursuant to an amended and restated exclusivity agreement with*
17 *Silimed which we refer to as the Silimed Agreement.*

18 . . .

19 **There are inherent risks in contracting with manufacturers**
20 **located outside of the United States such as in Brazil.**

21 Silimed is our sole source, third-party manufacturer and its
22 manufacturing plant is located in Brazil. There are inherent risks in
23 contracting with manufacturers located outside of the United States
such as in Brazil, including the risks of economic change, recession,
labor strikes or disruptions, political turmoil, new or changing tariffs
or trade barriers, new or different restrictions on importing or
exporting, civil unrest, infrastructure failure, cultural differences in
doing business, lack of contract enforceability, lack of protection for
intellectual property, war and terrorism. If any of these risks were to
materialize, we and Silimed would both be materially adversely
affected and our business, financial condition and results of operations
would suffer.

(Emphases added.)

1 23. The 2014 10-K contained signed certifications pursuant to the
2 Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants, stating that
3 the financial information contained in the 2014 10-K was accurate and disclosed
4 any material changes to the Company’s internal control over financial reporting.

5 24. On May 13, 2015, Sientra issued a press release and filed a Form 8-K
6 with the SEC announcing the Company’s financial and operating results for the
7 quarter ending March 31, 2015 (the “Q1 2015 8-K”). For the quarter, the
8 Company reported a net loss of \$3.38 million, or \$0.23 per diluted share, on
9 revenue of \$12.43 million.

10 25. On May 14, 2015, Sientra filed a quarterly report on Form 10-Q with
11 the SEC reiterating the financial and operating results previously announced in the
12 Q1 2015 8-K (the “Q1 2015 10-Q”).

13 26. The Q1 2015 10-Q contained signed certifications pursuant to SOX
14 by the Individual Defendants, stating that the financial information contained in
15 the Q1 2015 10-Q was accurate and disclosed any material changes to the
16 Company’s internal control over financial reporting.

17 27. On August 12, 2015, Sientra issued a press release and filed a Form
18 8-K with the SEC announcing the Company’s financial and operating results for
19 the quarter ending June 30, 2015 (the “Q2 2015 8-K”). For the quarter, the
20 Company reported a net loss of \$2.99 million, or \$0.20 per diluted share, on
21 revenue of \$14.21 million.

28. On August 13, 2015, Sientra filed a quarterly report on Form 10-Q with the SEC reiterating the financial and operating results previously announced in the Q2 2015 8-K (the “Q2 2015 10-Q”).

29. The Q2 2015 10-Q contained signed certifications pursuant to SOX by the Individual Defendants, stating that the financial information contained in the Q2 2015 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

30. The statements referenced in ¶¶ 21 - 29 above were materially false and misleading because Defendants made false and/or misleading statements and failed to disclose material adverse facts about the Company's business, operations, prospects, and performance. Specifically, during the Class Period, defendants made false and/or misleading statements and/or failed to disclose that: (i) Sientra's exclusive reliance on Silimed's Brazilian manufacturing facilities carried quality control risks; (ii) the manufacturing processes at the Silimed Rio de Janeiro manufacturing plant were contaminated; and (iii) as a result of the above, the Company's statements regarding quality control and other financial statements were materially false and misleading at all relevant times.

The Truth Emerges

31. On September 24, 2015, it was announced that the United Kingdom's MHRA had suspended sales of Silimed products after an audit of Silimed's manufacturing processes revealed contamination in Silimed's Rio de Janeiro manufacturing plant.

1 32. On this news, shares of Sientra fell \$10.88, or nearly 52.9%, to close
2 at \$9.70 on September 24, 2015.

3 33. As a result of defendants' wrongful acts and omissions, and the
4 precipitous decline in the market value of the Company's securities, Plaintiff and
5 other Class members have suffered significant losses and damages.

6 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

7 34. Plaintiffs bring this action as a class action pursuant to Federal Rule
8 of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those
9 who purchased or otherwise acquired Sientra securities during the Class Period
10 (the "Class"); and were damaged upon the revelation of the alleged corrective
11 disclosures. Excluded from the Class are Defendants herein, the officers and
12 directors of the Company, at all relevant times, members of their immediate
13 families and their legal representatives, heirs, successors or assigns and any entity
14 in which Defendants have or had a controlling interest.

15 35. The members of the Class are so numerous that joinder of all
16 members is impracticable. Throughout the Sientra Class Period, securities of
17 Sientra were actively traded on the NASDAQ Global Select Market. While the
18 exact number of Class members is unknown to Plaintiffs at this time and can only
19 be ascertained through appropriate discovery, Plaintiffs believe that there are
20 hundreds or thousands of members in the proposed Class. Record owners and
21 other members of the Class may be identified from records maintained by Sientra
22 or their transfer agents and may be notified of the pendency of this action by mail,
23 using the form of notice similar to that customarily used in securities class actions.

1 36. Plaintiff's claims are typical of the claims of the members of the
2 Class as all members of the Class are similarly affected by defendants' wrongful
3 conduct in violation of federal law complained of herein.

4 37. Plaintiff will fairly and adequately protect the interests of the
5 members of the Class and have retained counsel competent and experienced in
6 class action and securities litigation.

7 38. Common questions of law and fact exist as to all members of the
8 Class and predominate over any questions solely affecting individual members of
9 the Class. Among the questions of law and fact common to the Class are:

- 10 • whether the federal securities laws were violated by Defendants'
11 acts as alleged herein;
- 12 • whether statements made by Defendants to the investing public
13 during the Class Period misrepresented material facts about the
14 business, operations and management of Sientra;
- 15 • whether the Individual Defendants caused Sientra to issue false
16 and misleading financial statements during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing
18 false and misleading financial statements;
- 19 • whether the prices of Sientra securities during the Class Period
20 were artificially inflated because of the Defendants' conduct
21 complained of herein; and
- 22 • whether the members of the Class have sustained damages and, if
23 so, what is the proper measure of damages.

20 39. A class action is superior to all other available methods for the fair
21 and efficient adjudication of this controversy since joinder of all members is
22 impracticable. Furthermore, as the damages suffered by individual Class
23 members may be relatively small, the expense and burden of individual litigation

1 make it impossible for members of the Class to individually redress the wrongs
 2 done to them. There will be no difficulty in the management of this action as a
 3 class action.

4 40. Plaintiff will rely, in part, upon the presumption of reliance
 5 established by the fraud-on-the-market doctrine in that:

- 6 • Defendants made public misrepresentations or failed to disclose
 7 material facts during the Class Period;
- 8 • the omissions and misrepresentations were material;
- 9 • Sientra securities are traded in efficient markets;
- 10 • the Company's shares were liquid and traded with moderate to
 heavy volume during the Class Period;
- 11 • the Company traded on the NASDAQ, and was covered by
 multiple analysts;
- 12 • the misrepresentations and omissions alleged would tend to
 13 induce a reasonable investor to misjudge the value of the
 Company's securities; and
- 14 • Plaintiff and members of the Class purchased and/or sold Sientra
 15 securities between the time the Defendants failed to disclose or
 misrepresented material facts and the time the true facts were
 16 disclosed, without knowledge of the omitted or misrepresented
 facts.

17 41. Based upon the foregoing, Plaintiff and the members of the Class are
 18 entitled to a presumption of reliance upon the integrity of the market.

19 42. Alternatively, Plaintiffs and the members of the Class are entitled to
 20 the presumption of reliance established by the Supreme Court in *Affiliated Ute*
 21 *Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972),
 22
 23

1 as Defendants omitted material information in their Class Period statements in
2 violation of a duty to disclose such information, as detailed above.

3 **COUNT I**

4 **(Against All Defendants For Violations of**
5 **Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

6 43. Plaintiff repeats and realleges each and every allegation contained
7 above as if fully set forth herein.

8 44. This Count is asserted against defendants and is based upon Section
9 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
10 thereunder by the SEC.

11 45. During the Class Period, defendants engaged in a plan, scheme,
12 conspiracy and course of conduct, pursuant to which they knowingly or recklessly
13 engaged in acts, transactions, practices and courses of business which operated as
14 a fraud and deceit upon Plaintiff and the other members of the Class; made
15 various untrue statements of material facts and omitted to state material facts
16 necessary in order to make the statements made, in light of the circumstances
17 under which they were made, not misleading; and employed devices, schemes and
18 artifices to defraud in connection with the purchase and sale of securities. Such
19 scheme was intended to, and, throughout the Class Period, did: (i) deceive the
20 investing public, including Plaintiff and other Class members, as alleged herein;
21 (ii) artificially inflate and maintain the market price of Sientra securities; and (iii)
22 cause Plaintiff and other members of the Class to purchase or otherwise acquire
23 Sientra securities and options at artificially inflated prices. In furtherance of this

1 unlawful scheme, plan and course of conduct, defendants, and each of them, took
2 the actions set forth herein.

3 46. Pursuant to the above plan, scheme, conspiracy and course of
4 conduct, each of the defendants participated directly or indirectly in the
5 preparation and/or issuance of the quarterly and annual reports, SEC filings, press
6 releases and other statements and documents described above, including
7 statements made to securities analysts and the media that were designed to
8 influence the market for Sientra securities. Such reports, filings, releases and
9 statements were materially false and misleading in that they failed to disclose
10 material adverse information and misrepresented the truth about Sientra's quality
11 control processes and business prospects.

12 47. By virtue of their positions at Sientra, defendants had actual
13 knowledge of the materially false and misleading statements and material
14 omissions alleged herein and intended thereby to deceive Plaintiff and the other
15 members of the Class, or, in the alternative, defendants acted with reckless
16 disregard for the truth in that they failed or refused to ascertain and disclose such
17 facts as would reveal the materially false and misleading nature of the statements
18 made, although such facts were readily available to defendants. Said acts and
19 omissions of defendants were committed willfully or with reckless disregard for
20 the truth. In addition, each defendant knew or recklessly disregarded that material
21 facts were being misrepresented or omitted as described above.

22 48. Defendants were personally motivated to make false statements and
23 omit material information necessary to make the statements not misleading in

1 order to personally benefit from the sale of Sientra securities from their personal
2 portfolios.

3 49. Information showing that defendants acted knowingly or with
4 reckless disregard for the truth is peculiarly within defendants' knowledge and
5 control. As the senior managers and/or directors of Sientra, the Individual
6 Defendants had knowledge of the details of Sientra's internal affairs.

7 50. The Individual Defendants are liable both directly and indirectly for
8 the wrongs complained of herein. Because of their positions of control and
9 authority, the Individual Defendants were able to and did, directly or indirectly,
10 control the content of the statements of Sientra. As officers and/or directors of a
11 publicly-held company, the Individual Defendants had a duty to disseminate
12 timely, accurate, and truthful information with respect to Sientra's business,
13 operations, future financial condition and future prospects. As a result of the
14 dissemination of the aforementioned false and misleading reports, releases and
15 public statements, the market price of Sientra securities was artificially inflated
16 throughout the Class Period. In ignorance of the adverse facts concerning
17 Sientra's operations and quality control processes which were concealed by
18 defendants, Plaintiff and the other members of the Class purchased or otherwise
19 acquired Sientra securities at artificially inflated prices and relied upon the price
20 of the securities, the integrity of the market for the securities and/or upon
21 statements disseminated by defendants, and were damaged thereby.

22 51. During the Class Period, Sientra securities were traded on an active
23 and efficient market. Plaintiff and the other members of the Class, relying on the

1 materially false and misleading statements described herein, which the defendants
2 made, issued or caused to be disseminated, or relying upon the integrity of the
3 market, purchased or otherwise acquired shares of Sientra securities at prices
4 artificially inflated by defendants' wrongful conduct. Had Plaintiff and the other
5 members of the Class known the truth, they would not have purchased or
6 otherwise acquired said securities, or would not have purchased or otherwise
7 acquired them at the inflated prices that were paid. At the time of the purchases
8 and/or acquisitions by Plaintiff and the Class, the true value of Sientra securities
9 was substantially lower than the prices paid by Plaintiff and the other members of
10 the Class. The market price of Sientra securities declined sharply upon public
11 disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

12 52. By reason of the conduct alleged herein, defendants knowingly or
13 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act
14 and Rule 10b-5 promulgated thereunder.

15 53. As a direct and proximate result of defendants' wrongful conduct,
16 Plaintiff and the other members of the Class suffered damages in connection with
17 their respective purchases, acquisitions and sales of the Company's securities
18 during the Class Period, upon the disclosure that the Company had been
19 disseminating misrepresented financial statements to the investing public.
20
21
22
23

COUNT II

**(Violations of Section 20(a) of the
Exchange Act Against The Individual Defendants)**

54. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

55. During the Class Period, the Individual Defendants participated in the operation and management of Sientra, and conducted and participated, directly and indirectly, in the conduct of Sientra's business affairs. Because of their senior positions, they knew the adverse non-public information about Sientra's business and quality control.

56. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Sientra's quality control processes and to correct promptly any public statements issued by Sientra which had become materially false or misleading.

57. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Sientra disseminated in the marketplace during the Class Period concerning Sientra's results of operations and quality control processes. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Sientra to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Sientra within the meaning of Section 20(a) of the Exchange Act. In

1 this capacity, they participated in the unlawful conduct alleged which artificially
2 inflated the market price of Sientra securities.

3 58. Each of the Individual Defendants, therefore, acted as a controlling
4 person of Sientra. By reason of their senior management positions and/or being
5 directors of Sientra, each of the Individual Defendants had the power to direct the
6 actions of, and exercised the same to cause, Sientra to engage in the unlawful acts
7 and conduct complained of herein. Each of the Individual Defendants exercised
8 control over the general operations of Sientra and possessed the power to control
9 the specific activities which comprise the primary violations about which Plaintiff
10 and the other members of the Class complain.

11 59. By reason of the above conduct, the Individual Defendants are liable
12 pursuant to Section 20(a) of the Exchange Act for the violations committed by
13 Sientra.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff demands judgment against Defendants as
16 follows:

17 A. Determining that the instant action may be maintained as a class
18 action under Rule 23 of the Federal Rules of Civil Procedure, and certifying
19 Plaintiff as the Class representative;

20 B. Requiring Defendants to pay damages sustained by Plaintiff and the
21 Class by reason of the acts and transactions alleged herein;

1 C. Awarding Plaintiff and the other members of the Class prejudgment
2 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees
3 and other costs; and

4 D. Awarding such other and further relief as this Court may deem just
5 and proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.

8 Dated: September 25, 2015

9 Respectfully submitted,

10 **POMERANTZ LLP**

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